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September 18, 2006

Michelle Stamates
Board for Financing Water Projects
Division of Environmental Protection
901 S. Stewart Street, Suite 4001
Carson City, NV 89701

Re: LCB File No. R104-04


Dear Ms. Stamates:

A regulation adopted by the Board for Financing Water Projects has been filed today with the Secretary of State pursuant to NRS 233B.067. As provided in NRS 233B.070, this regulation becomes effective upon filing.

Enclosed are two copies of the regulation bearing the stamp of the Secretary of State which indicates that it has been filed. One copy is for your records and the other is for delivery to the State Library and Archives Administrator pursuant to subsection 5 of NRS 233B.070.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By 
Ann M. Iverson
Senior Deputy Legislative Counsel

AMI/slj

Secretary of State
Filing Data

DEAN HELLER
SECRETARY OF STATE

2006 SEP 18 PM 3:11

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CARSON CITY
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**For Filing Administrative
Regulations**

R104-04

**For Emergency
Regulations Only**

Effective Date

Expiration Date

Governor's Signature

Board for Financing Water Projects

Classification [] Proposed ☒ Adopted By Agency [] Temporary [] Emergency [] Permanent [XX]

Brief description of action:

The regulations governing Grants for Capital Improvements to Publicly Owned Water Systems, NAC 349.430 to NAC 349.574, inclusive, are amended to change wording to reflect changes in internal agency organization, eligible projects, and application fees.

Authority citation other than 233B: § NRS 349.982

Notice date: June 20, 2006

Hearing date: August 23, 2006

**ADOPTED REGULATION OF THE
BOARD FOR FINANCING WATER PROJECTS**

LCB File No. R104-04

Effective September 18, 2006

EXPLANATION – Matter in *italics* is new; matter in brackets [omitted material] is material to be omitted.

AUTHORITY: §§1-34, NRS 349.982.

A REGULATION relating to water; revising provisions relating to grants to purveyors of water and eligible recipients to pay for certain costs associated with certain water systems, water conservation, connecting to municipal water systems and connecting to community sewage disposal systems; and providing other matters properly relating thereto.

Section 1. Chapter 349 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. *“Account for the Revolving Fund” has the meaning ascribed to it in NRS 445A.203.*

Sec. 3. *“Community sewage disposal system” has the meaning ascribed to it in NRS 349.980.*

Sec. 4. *“Eligible recipient” means a political subdivision of this State, including, without limitation, a city, county, unincorporated town, water authority, conservation district, irrigation district, water district, water conservancy district or general improvement district.*

Sec. 5. *“Individual sewage disposal system” has the meaning ascribed to it in NRS 349.980.*

Sec. 6. *"Irrigation district" has the meaning ascribed to it in NRS 539.013.*

Sec. 7. NAC 349.430 is hereby amended to read as follows:

349.430 As used in NAC 349.430 to 349.574, inclusive, *and sections 2 to 6, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 349.435 to 349.469, inclusive, *and sections 2 to 6, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 8. NAC 349.440 is hereby amended to read as follows:

349.440 "Bureau" means the Bureau of ~~[Health Protection Services of the Health Division of the Department of Human Resources.]~~ *Safe Drinking Water of the Division of Environmental Protection of the Department.*

Sec. 9. NAC 349.445 is hereby amended to read as follows:

349.445 "Community water system" ~~{means a public water system which:~~

- ~~—1. Has 15 or more service connections; or~~
- ~~—2. Serves 25 or more persons;~~

~~→ at places which are intended for year-round occupancy.]~~ *has the meaning ascribed to it in NRS 349.980.*

Sec. 10. NAC 349.461 is hereby amended to read as follows:

349.461 "Fund" means the fund ~~{for grants to certain purveyors of water.}~~ *created pursuant to NRS 349.984.*

Sec. 11. NAC 349.464 is hereby amended to read as follows:

349.464 "Program" means the program *established pursuant to NRS 349.981* to provide grants of money to purveyors of water *and eligible recipients* to pay for costs of ~~capital improvements pursuant to NRS 349.981.~~ *improvements and for costs associated with:*

1. *Connecting to a municipal water system; or*
2. *Abandoning an individual sewage disposal system and connecting the property formerly served by the abandoned individual sewage disposal system to a community sewage disposal system.*

Sec. 12. NAC 349.469 is hereby amended to read as follows:

349.469 "Viable" means ~~having~~ :

1. *For a purveyor of water, having* the financial, managerial and technical ability to sustain *over a long term* the operation of a community water system or nontransient water system ~~over a long term~~ and *to* remain in compliance with the requirements for public water systems ~~+~~ ;
and
2. *For eligible recipients, having the financial, managerial and technical ability to remain in compliance with applicable federal, state and local requirements for the system for which the application for the grant was made.*

Sec. 13. NAC 349.471 is hereby amended to read as follows:

349.471 For the purposes of NRS 349.980, the Board interprets "costs traditionally associated with capital improvements" to include:

1. The costs to carry out any feasible and appropriate changes in operations necessary for a ~~community water system or nontransient water system~~ *purveyor of water* to become viable,

including, without limitation, changes in ownership, management, accounting, rates, maintenance, consolidation and alternative supplies of water; and

2. Any costs that are not directly related to the actual construction of the capital improvement, including, without limitation, costs ~~{for}~~ :

(a) *For* engineering, design, construction, legal and financial services ;

(b) *Incurred in obtaining a loan from the Account for the Revolving Fund;* and

(c) *For* acquisition of water rights, easements and rights-of-way.

Sec. 14. NAC 349.475 is hereby amended to read as follows:

349.475 1. The Board will provide a grant to a purveyor of water *or an eligible recipient* only if:

(a) The grant will assist ~~{the}~~ :

(1) *The* purveyor of water in constructing a capital improvement to the community water system or nontransient water system that will directly enable the *purveyor of* water ~~{system}~~ to comply with the requirements for public water systems; ~~{and}~~ *or*

(2) *The eligible recipient in carrying out an improvement set forth in paragraph (b), (c), (d) or (e) of subsection 1 of NRS 349.981;*

(b) The purveyor of water *or eligible recipient* is unable to finance *from its own resources* the proposed ~~{capital improvement from its own resources.}~~ *improvement or costs associated with connecting to a municipal water system or community sewage disposal system;*

(c) *The purveyor of water is currently included on the priority list for the Account for the Revolving Fund; and*

(d) Water meters or other approved devices which will measure water delivered to each water user are installed and used in any community water system or nontransient water system for which an application for a grant is made, unless the Board determines that water meters or such other devices are not required to ensure effective monitoring and conservation of water in that community water system or nontransient water system.

2. To apply for a grant, a purveyor of water *or eligible recipient* must file with the Board a letter of intent. The letter must include:

- (a) The name, address and telephone number of the applicant.
- (b) The date on which *the service was first provided by the* ~~{publicly-owned}~~ community water system , ~~{or publicly-owned}~~ nontransient water system ~~{began service.}~~ , *sewage disposal system or other system for which the application for a grant was made.* If the exact date is not known, the month and year must be provided.
- (c) The title or name, the location and a brief description of the proposed ~~{capital}~~ improvement, including maps or preliminary plans.
- (d) The number of ~~{residential connections and people}~~ *persons or other entities* served and the ~~{number of nonresidential connections served.}~~ *assessed value of the property within the area that is served by the community water system, nontransient water system, sewage disposal system or other system for which the application for a grant was made.*
- (e) A preliminary estimate of the cost of the ~~{capital}~~ *proposed* improvement *or costs associated with connecting to a municipal water system or community sewage disposal system, including, without limitation, the cost of construction, engineering, contingencies* and any additional costs necessary for financing the ~~{capital}~~ improvement.

(f) A description of future ~~{capital}~~ improvements planned by the applicant, if any, that are not part of the ~~{capital}~~ ***proposed*** improvement for which the application for a grant is made.

(g) A brief description of how the ~~{capital improvement makes the community water system or nontransient water system comply}~~ ***proposed improvement will assist the purveyor of water in complying*** with the requirements for public water systems ~~{}~~ ***or the eligible recipient in carrying out the purpose of the proposed improvement.***

(h) Documentation concerning the inability of the applicant to finance the ~~{capital improvement}~~ ***proposed improvement or costs associated with connecting to a municipal water system or community sewage disposal system***, including, but not limited to:

- (1) Letters from local lending institutions;
- (2) Letters from financial advisers, accountants or fiscal agents, if applicable;
- (3) Copies of any applications for funding the ~~{capital}~~ ***proposed*** improvement ***or costs*** filed by the applicant ~~{with a governmental agency that funds capital improvements, other than the Board; and~~

~~—(4)}~~ ***and, if the application is for a loan, a copy of any documentation indicating that the loan was approved or denied or the likelihood that the loan will be approved, including, without limitation, such an application and documentation concerning a loan from:***

- (I) The Account for the Revolving Fund;***
- (II) The fund described in NAC 445A.728; or***
- (III) Any other governmental agency that provides financial assistance for improvements and with which the applicant has applied for a loan; and***

(4) A statement ~~concerning~~ **justifying** the inability of the applicant to finance the ~~capital improvement.~~ **proposed improvement or costs.**

(i) A brief demonstration ~~[which includes any relevant financial information.]~~ that the ~~[community water system or nontransient water system]~~ **applicant** will be viable upon completion of the ~~capital improvement.~~

~~(j) A~~ **proposed improvement which includes, without limitation, audited financial statements for the 3 years immediately preceding the date that the letter of intent is filed with the Board and a recently approved budget.**

(j) **If applicable, a statement that the plan of water conservation adopted pursuant to NRS 540.131 will be filed with the *Water Planning Section of the Division of Water Resources of the Department* before receipt of the grant.**

(k) Any additional information required by the Board.

3. A letter of intent must be directed to the Board at ~~the address:~~

~~(a) Specified~~ **either:**

(a) The address specified in the application for a grant provided by the Division of *Environmental Protection of the Department* to the applicant; or

(b) ~~[Otherwise]~~ The address otherwise provided by the Division of *Environmental Protection of the Department* to the applicant for that purpose.

4. An applicant shall provide nine copies of the letter of intent to the Division ~~[of~~ **of *Environmental Protection of the Department.***

Sec. 15. NAC 349.480 is hereby amended to read as follows:

349.480 1. Upon receipt of a letter of intent , the Division *of Environmental Protection of the Department* shall:

- (a) Record the date of receipt;
- (b) Maintain a file containing all documents and information pertaining to the financing of the proposed ~~{capital improvement;}~~ **improvement or costs**; and
- (c) Promptly forward a copy of the letter of intent to the Bureau ~~{-}~~ **or the Water Planning Section of the Division of Water Resources of the Department, as appropriate given the type of improvement or costs proposed in the letter of intent.**

2. The Division *of Environmental Protection of the Department* and the ~~{Bureau}~~ **entity which received a copy of the letter of intent pursuant to paragraph (c) of subsection 1** shall review the letter of intent and forward their comments to the Board within 30 days after receipt of the letter of intent.

3. The Board will consider a letter of intent forwarded from the Division *of Environmental Protection of the Department* and will, in a motion or resolution adopted by the Board, determine ~~{-~~

~~—(a) Whether the applicant:~~

~~—(1) Was} whether:~~

(a) If the applicant is a purveyor of water other than the Lincoln County Water District, the community water system or nontransient water system was in existence on January 1, 1995
};

~~—(2) Is} , and is currently publicly owned; {and~~

~~—(3) Is otherwise}~~

(b) If the applicant is a conservation district, irrigation district, conservancy district or general improvement district, the applicant was in existence on January 1, 1995;

(c) The proposed improvements will be publicly owned;

(d) The applicant is eligible for the program pursuant to NRS 349.981 or 349.983; and

~~[(b) Whether the proposed capital]~~

(e) The proposed improvement is likely to be economically justified and financially feasible pursuant to the provisions of NAC 349.430 to 349.574, inclusive ~~+~~, and sections 2 to 6, inclusive, of this regulation.

Sec. 16. NAC 349.485 is hereby amended to read as follows:

349.485 1. The Board will approve the letter of intent in a motion or resolution adopted by the Board if the Board:

(a) Makes the determinations required pursuant to subsection 3 of NAC 349.480; and

(b) Finds that the ~~{capital improvement qualifies}~~ **proposed improvement or costs qualify** for a grant pursuant to NRS 349.981 or 349.983.

2. Upon approval of a letter of intent by the Board, the applicant must file an application for the proposed ~~{capital}~~ improvement **or costs** within 1 year after the date of approval or by a date specified by the Board, except that:

(a) Upon the request of the applicant and based upon the occurrence of circumstances beyond the control of the applicant, the Division of *Environmental Protection of the Department* may once authorize the applicant to file the application at a later date, which must not be later than 18 months after the date of approval or 6 months after the date originally specified by the Board; or

(b) The Board may, upon good cause shown, extend the period for the applicant to file the application.

3. If the Board has approved a letter of intent, it may request that the Division ~~{and the Bureau,}~~ *of Environmental Protection or the Water Planning Section of the Division of Water Resources of the Department, as appropriate and* within the limits of their available resources, assist the applicant with preparing an application. The Board may also request the Division *of Environmental Protection of the Department* to issue a letter evidencing an intent to proceed with the program.

4. The approval of a letter of intent by the Board does not guarantee or ensure that any proposed ~~{capital}~~ improvement *or costs* will be provided a grant.

Sec. 17. NAC 349.490 is hereby amended to read as follows:

349.490 1. If the Board does not make the affirmative determinations required by subsection 3 of NAC 349.480 or finds that the letter of intent does not meet the requirements of NAC 349.475, ~~{it shall}~~ *the Board will* disapprove the letter of intent, by motion or resolution, and promptly notify the Division *of Environmental Protection of the Department* and the applicant of its decision, listing the reasons for disapproval.

2. The decision of the Board is final.

3. If a letter of intent is disapproved by the Board, the applicant may reapply not less than 6 months after the date of disapproval or at such time as is permitted by the Board, whichever is earlier.

Sec. 18. NAC 349.495 is hereby amended to read as follows:

349.495 1. If a letter of intent for a proposed ~~{capital}~~ improvement *or proposed costs* is approved, an applicant must submit an original and ~~{nine}~~ *eight* copies of an application to the Board.

2. An application submitted pursuant to subsection 1 must be:

(a) In the form provided by the Division ~~{}~~ *of Environmental Protection of the Department;*
and

(b) Addressed to the Board as provided in subsection 3 of NAC 349.475.

~~{3. A deposit of \$1,000 must be paid to the Division at the time an application is filed. The Division shall deliver the money to the State Treasurer for credit to the Fund. The money must be used to defray the expenses of the Division related to the program for financing the capital improvement. The amount of the deposit must be included in the total amount of the administrative fee charged to a recipient of a grant pursuant to NAC 349.545. A deposit paid to the Division pursuant to this subsection is nonrefundable.}~~

Sec. 19. NAC 349.500 is hereby amended to read as follows:

349.500 1. Except as otherwise provided in ~~{subsection 2,}~~ *subsections 2 and 3*, the application must include the following items and information:

(a) A preliminary engineering report for the construction, operation and maintenance of the proposed ~~{capital}~~ improvement, including:

(1) The expected costs and benefits of the project;

(2) Plans for the development of the facilities of the ~~{community water system or nontransient water system;}~~ *applicant;* and

(3) The economic justification for and expected feasibility of the project,

↪ as prepared by a person licensed as a professional engineer pursuant to chapter 625 of NRS.

(b) A complete and legible legal description of the entire area of service for the ~~{capital}~~ *proposed* improvement, including a map showing the layout of the ~~{capital}~~ *proposed* improvement and the location and number of persons served by the ~~{capital}~~ *proposed* improvement in relation to maps of the United States Public Lands Survey, assessor's maps, or aerial or other similar maps showing sections and townships.

(c) A complete and legible copy of the legal description of the property that will be occupied by the ~~{community water system or nontransient water system,}~~ *proposed improvement*, including the assessor's plot maps on which the proposed ~~{capital}~~ improvement is identified.

(d) Proof of ownership, rights-of-way, easements or agreements, showing that the applicant holds or is able to acquire all lands, other than public lands, interests therein and water rights necessary for the construction of the proposed ~~{capital}~~ improvement. Copies of deeds to lands to be occupied, records of surveys, easements, agreements or permits to appropriate water may be used as evidence of ownership.

(e) A report concerning the amount of water required to satisfy the needs of the ~~{capital}~~ *proposed* improvement, including:

- (1) The source and amounts of supply;
- (2) The rights to the water;
- (3) The quality of the water going into the ~~{capital}~~ *proposed* improvement;
- (4) The quality of treated water flowing out of the ~~{capital}~~ *proposed* improvement; and

(5) A schedule indicating the volume of water required each month from the {capital} *proposed* improvement to meet the needs of the customers of the community water system or nontransient water system.

(f) A report concerning the implementation of the plan of water conservation adopted by the applicant pursuant to NRS 540.131, including:

(1) A copy of the plan;

(2) The most recent schedule established by the applicant for carrying out the plan; and

(3) An analysis of the effectiveness of the plan.

(g) A complete and itemized list of the total estimated cost of the proposed {capital} improvement, including an estimate for *construction costs*, contingencies, engineering fees, administrative fees, legal fees and financing fees.

(h) An estimate of the capital costs required for the installation of water meters on all service connections to the community water system or nontransient water system, including an analysis of the feasibility of installing the water meters.

(i) Information which demonstrates that the {capital} *proposed* improvement complies with applicable local regulations governing the use of land and water and any other applicable regulations and ordinances.

(j) A list of the permits required to carry out the {capital} *proposed* improvement, with the anticipated dates and conditions for approval of those permits.

(k) The estimated cost of operation and maintenance for the {capital} *proposed* improvement.

(l) The amount of money available for the ~~{capital}~~ **proposed** improvement other than the money to be derived from the program, including terms of repayment if short-term or long-term financing is contemplated as a source of funding.

(m) A plan for the construction of ~~{capital improvements to the community water system or nontransient water system}~~ **any related improvements** during the next 5 years.

(n) Copies of the current documents prepared by or on behalf of the applicant pursuant to NRS 350.013, which depict the effect of the proposed ~~{capital}~~ improvement on the financial capacity of the ~~{community water system or nontransient water system}~~ **applicant**.

(o) Data and information deemed necessary by the Division *of Environmental Protection of the Department* or by the financial advisers or other consultants of the Division.

2. The Board may waive any of the requirements of subsection 1 upon written request of the applicant.

3. *An applicant is not required to include an item and information required by subsection 1 if the item or information is not applicable to the type of improvement proposed in the application.*

Sec. 20. NAC 349.505 is hereby amended to read as follows:

349.505 Upon receipt of an application, the Division *of Environmental Protection of the Department* shall:

1. ~~{Forward}~~ **If necessary, forward** all data and information contained in the application to ~~{the Bureau and, if necessary, to}~~ any financial adviser, attorney and other person retained by the Division to determine the financial feasibility of the proposed ~~{capital}~~ improvement.

2. ~~{Evaluate}~~ *If applicable, evaluate* the ability of the ~~{community water system or nontransient water system}~~ *applicant* to provide for:

- (a) The continuing replacement of components of the water system that are functionally obsolete or worn out;
- (b) Current and anticipated debt service; and
- (c) Current and future expenses of operation and maintenance.

3. *If applicable, evaluate the charge for water that customers of the community water system or nontransient water system are paying and determine if the charge is sufficient to satisfy expenses related to:*

- (a) *The operation and maintenance of the community water system or nontransient water system; and*
- (b) *Periodically replacing components of the community water system or nontransient water system that are functionally obsolete or worn out.*

4. *If applicable, determine whether any exceptional circumstances exist in the area served by the community water system or nontransient water system.*

Sec. 21. NAC 349.510 is hereby amended to read as follows:

349.510 1. Within 20 working days after receipt of an application , ~~{and deposit,}~~ the Division of *Environmental Protection of the Department* shall review the application and determine if all information required by the Board has been provided.

2. If the Division of *Environmental Protection of the Department* determines that the application is incomplete, the Division of *Environmental Protection of the Department*

shall, within 30 working days after the receipt of the application , ~~{and deposit,}~~ notify the applicant of the deficiencies and provide the applicant with instructions for satisfying those deficiencies. The applicant must comply with those instructions within 45 working days after the receipt of the instructions, except that, upon written request by the applicant and for good cause, the Division *of Environmental Protection of the Department* may once extend the period for compliance by the applicant. If the applicant submits any additional information concerning his application within the appropriate period, the Division *of Environmental Protection of the Department* shall, within 30 working days after receipt of that information, determine whether the application is complete. If the applicant does not complete the application because ~~{he}~~ *the applicant* failed to comply with the instructions provided to ~~{him}~~ *the applicant* by the Division *of Environmental Protection of the Department* or *failed to* submit any additional information required by the Division *of Environmental Protection of the Department* within the appropriate period, the Division *of Environmental Protection of the Department* shall recommend that the Board deny the application.

3. Within ~~{60}~~ 30 working days after the Division *of Environmental Protection of the Department* determines that the application is complete, the Division *of Environmental Protection of the Department and the Bureau or the Water Planning Section of the Division of Water Resources of the Department, as appropriate given the type of improvement proposed in the application,* shall review the application and feasibility reports ~~{and prepare a report to the Board concerning the application.~~

—4.— The Bureau shall review the application} to determine if the ~~{capital}~~ *proposed* improvement complies with ~~{the}~~ :

(a) *The requirements for public water systems ~~[The Bureau]~~ if the applicant is a purveyor of water; or*

(b) *The applicable federal, state and local requirements for the system for which the application for a grant was made if the applicant is an eligible recipient.*

4. *The Division of Environmental Protection of the Department shall prepare a report to the Board concerning the ~~[capital]~~ proposed improvement or costs within 60 working days after receipt ~~[from the Division]~~ of the completed application. The Division of Environmental Protection of the Department shall ensure that:*

(a) *It receives information concerning the review of the application by the Bureau or the Water Planning Section of the Division of Water Resources of the Department, as applicable; and*

(b) *The information received pursuant to paragraph (a) is incorporated in the report prepared by the Division of Environmental Protection of the Department.*

5. *The report to the Board prepared by the Division ~~[and the Bureau]~~ of Environmental Protection of the Department must contain:*

(a) *The application;*

(b) *A summary of the economic justification for and financial feasibility of the proposed ~~[capital]~~ improvement;*

(c) *The status of the funding available to the applicant for the ~~[capital improvement];~~ proposed improvement or costs; and*

(d) *Evaluations by the Division of Environmental Protection of the Department concerning:*

(1) Whether the ~~{community water system or nontransient water system}~~ **applicant** will be viable upon completion of the proposed ~~{capital}~~ improvement;

(2) ~~{The}~~ **If applicable, the** effectiveness of the applicant's efforts to conserve water and of the plan of water conservation adopted by the applicant pursuant to NRS 540.131; ~~{and}~~

(3) The need for and the feasibility of installing water meters on all service connections to the community water system or nontransient water system ~~{-}~~ ; **and**

(4) **The information that results from the evaluations and determinations conducted pursuant to subsections 3 and 4 of NAC 349.505.**

Sec. 22. NAC 349.515 is hereby amended to read as follows:

349.515 1. Except as otherwise provided in subsections 2 and 3, an application must not be approved by the Board until:

(a) Copies of any permits necessary for compliance with any requirements for planning and zoning, including any necessary variances or special use permits, are received by the Board; or

(b) Each agency issuing a permit specified in paragraph (a) has given written authorization to proceed with the proposed ~~{capital}~~ improvement and a copy of the authorization is received by the Board.

2. The Board may waive the requirements of subsection 1 if it has received information from its counsel or any other reliable source that the proposed ~~{capital}~~ improvement will receive or has received all permits required by any governmental agency which are necessary to proceed with the construction, improvement, rehabilitation or redevelopment of the ~~{capital}~~ **proposed** improvement.

3. The Board may, before it receives any permit required pursuant to subsection 1 that requires the submission of a detailed engineering design, approve an application if there are no foreseeable conditions threatening the feasibility of the proposed ~~{capital}~~ improvement.

4. The Board will not approve an application until it determines that the applicant owns sufficient water rights to carry out the proposed ~~{capital}~~ improvement or there are water rights otherwise available and committed to the proposed ~~{capital}~~ improvement.

Sec. 23. NAC 349.520 is hereby amended to read as follows:

349.520 1. If the Board determines not to approve an application, it will prepare findings and conclusions concerning its determination and adopt a resolution stating the reasons for the disapproval.

2. The Board will give the applicant and the Division *of Environmental Protection of the Department* notice of its action.

Sec. 24. NAC 349.525 is hereby amended to read as follows:

349.525 Before approving an application, the Board or its designated representative:

1. Will hold a public meeting on the proposed ~~{capital}~~ improvement *or costs* and provide reasonable notice to the members of the public who may be affected by the ~~{capital}~~ improvement. *proposed improvement or costs.*

2. May return the application to the applicant for the correction of any deficiencies.

Sec. 25. NAC 349.530 is hereby amended to read as follows:

349.530 1. Except as otherwise provided in subsection 2, the Board will review the completed application and determine whether, based on the records and documents submitted to the Board concerning the ~~{capital improvement}~~ *proposed improvement or costs*:

- (a) The proposed ~~{capital}~~ improvement is economically justified and financially feasible.
 - (b) The proposed ~~{capital}~~ improvement complies with the provisions of NRS 349.980 to 349.987, inclusive.
 - (c) The plan for development of the proposed ~~{capital}~~ improvement is satisfactory.
 - (d) The applicant is able to obtain the financing required to complete the ~~{capital}~~ **proposed** improvement.
 - (e) The applicant has taken sufficient and reasonable efforts to determine whether the proposed ~~{capital}~~ improvement conflicts with any regional master plan of any local, state or federal governing authority, and those efforts have not revealed such a conflict.
 - (f) The proposed ~~{capital}~~ improvement will not use or waste excessive quantities of water.
2. If the Board determines pursuant to paragraph (a) of subsection 1 that the proposed ~~{capital}~~ improvement is not economically justified and financially feasible, the Board will, based on the records and documents submitted to the Board concerning the ~~{capital}~~ **proposed** improvement, determine whether the construction of the ~~{capital}~~ **proposed** improvement is in the interest of the State and brings the ~~{community water system or nontransient water system}~~ **purveyor of water** into compliance with the requirements for public water systems ~~{-}~~ **or brings the eligible recipient into compliance with any applicable federal, state or local laws with which the eligible recipient is not in compliance.** In making its determination, the Board will consider ~~{-}~~ **, if applicable:**

- (a) Whether there are any communities located near the community water system or nontransient water system that offer similar living conditions with potable water;

(b) Whether the applicant has taken sufficient and reasonable efforts to discover an alternate source of potable water for the community water system or nontransient water system; and

(c) Whether any other useable source of potable water for the community water system or nontransient water system has been discovered.

3. The Board will approve or disapprove the proposed ~~{capital}~~ improvement *or costs* taking into consideration the determinations made pursuant to subsections 1 and 2. If the Board approves the proposed ~~{capital improvement,}~~ *improvement or costs*, it will take into consideration the amount of money in the Fund and determine whether to provide a grant for the proposed ~~{capital improvement,}~~ *improvement or costs*. The Board may give precedence to ~~{capital}~~ improvements which provide maximum benefits to the State.

Sec. 26. NAC 349.535 is hereby amended to read as follows:

349.535 1. If the Board determines to provide a grant, it will adopt a resolution which ~~{will}~~ *must* include:

(a) A statement of the approval of the Board that sets forth its findings of fact concerning its determinations made pursuant to NAC 349.530;

(b) The application; and

(c) The terms for providing the grant to the applicant.

2. *To determine the amount of a grant to a purveyor of water, the Board will, pursuant to NRS 349.983, develop and use a scale which the Board may periodically revise. The factors the Board will consider in developing the scale include, without limitation:*

(a) Whether the improvement for which the grant is requested is included on the priority list for the Account for the Revolving Fund for the current year;

(b) *If applicable, the rank of the improvement for which the grant is requested in relation to other projects on the priority list for the Account for the Revolving Fund for the current year;*

(c) *The median household income for the community or area that is served by the community water system or nontransient water system for which the grant is requested as compared to the median household income in this State;*

(d) *The number of persons served by the community water system or nontransient water system for which the grant is requested;*

(e) *The amount of reduction in the leakage of water, if any, in the community water system or nontransient water system for which the grant is requested;*

(f) *The effectiveness of any water conservation in the area that is served by the community water system or nontransient water system for which the grant is requested; and*

(g) *The monthly charge for water that residential customers of the community water system or nontransient water system for which the grant is requested are paying for the month in which the application for a grant is submitted.*

3. The Board will send a copy of the resolution to the Division ~~+~~

~~3-1~~ *of Environmental Protection of the Department.*

4. Within 10 days after receipt of the resolution of the Board, the Division shall:

(a) Notify the applicant ~~{, Director and Bureau}~~ *and the Director* of the decision of the Board.

(b) ~~Impose an administrative fee in accordance with the provisions of NAC 349.545.~~

~~—(e)}~~ Send the applicant an inducement letter which:

(1) States the intention of the Director to issue the grant to be paid as other claims against the State are paid if the ~~{capital}~~ improvement meets local, state and federal requirements;

(2) States the amount of the grant;

(3) States that if the grant is to be made from the proceeds of bonds, it will be conditioned upon the successful issuance of the bonds;

(4) Directs the applicant to submit any supporting documentation required by the Division; and

(5) Directs the applicant to comply with any conditions imposed upon the grant and to enter into the funding agreement required pursuant to NAC 349.549 within 6 months after the date the Board approves the grant or such other date as the Board specifies.

Sec. 27. NAC 349.540 is hereby amended to read as follows:

349.540 ~~{1.}~~ Upon receipt of a resolution of the Board approving the ~~{capital improvement}~~ *improvement or costs*, the Division of *Environmental Protection of the Department* may request the ~~{State Board of Finance}~~ *Office of the State Treasurer* to issue general obligation bonds in an amount sufficient to fund the grant. ~~{The Division shall notify the Director of the Department of Administration of any proposed sale of bonds.}~~

~~2. If the State Board of Finance approves the request of the Division, a commitment for the grant may be made by the Division. If such a commitment is made, the Director shall enter into the funding agreement required by NAC 349.549.}~~

Sec. 28. NAC 349.549 is hereby amended to read as follows:

349.549 1. *The recipient of a grant under the program shall pay to the Division of Environmental Protection of the Department an administrative fee of \$1,000. The money must be used for the purposes set forth in subsection 4 of NRS 349.982.*

2. The recipient of a grant under the program and the Director shall, if all conditions of the grant have been met, execute a funding agreement that complies with the requirements of this section.

~~{2-}~~ 3. The funding agreement must:

- (a) Be for a term of not more than 5 years;
- (b) Set forth the maximum amount disbursable pursuant to the grant, the percentage of eligible costs that will be paid and the amount of the minimum contribution to be paid by the recipient.
- (c) Distinguish costs that are eligible and ineligible for payment pursuant to the grant, and set forth formulas for sharing the cost of components of the ~~{capital}~~ improvement that are partially eligible for payment pursuant to the grant.
- (d) Describe procedures for the disbursement of the grant.
- (e) Set forth any state requirements regarding:
 - (1) Compliance with the laws of this State;
 - (2) Access by the State to any accounts and books of the recipient that relate to the ~~{capital}~~ improvement;
 - (3) Access to the site of the ~~{capital}~~ improvement for inspection by state personnel;
 - (4) Indemnification of the State;
 - (5) The acknowledgment of the amount contributed by the State pursuant to the grant;

(6) The submission of financial reports and reports concerning the progress of the ~~{capital}~~ improvement;

(7) The maintenance of records;

(8) The provision of addresses for notification and other communication;

(9) The approval of plans and specifications;

(10) The submission of proof of the receipt of any required permits;

(11) The notification of the State concerning any difficulties in the construction or funding of the ~~{capital}~~ improvement that could adversely affect the ~~{capital}~~ improvement;

(12) The notification of the State concerning any claims made against the ~~{owner of the community water system or nontransient water system,}~~ *recipient of the grant*, the engineer or contractor for the ~~{capital}~~ improvement, or any other person associated with the ~~{capital}~~ improvement; and

(13) The submission, review and approval of contract change orders.

(f) Set forth provisions concerning:

(1) Requirements for the methods of procurement and applicability of the provisions of chapter 332 of NRS;

(2) Any default or termination;

(3) The rights of the State if the agreement is terminated;

(4) The right of the State to commence legal proceedings;

(5) The right of the State to require audits at the expense of the recipient;

(6) The amendment of the agreement;

(7) Requirements for notification of the parties to the agreement; and

(8) The release of any liability arising from a default.

(g) Set forth any other contractual provisions relevant to the grant or ~~capital~~ improvement.

Sec. 29. NAC 349.554 is hereby amended to read as follows:

349.554 The recipient of a grant under the program:

1. Shall, before:

(a) Bids for the ~~capital~~ improvement are advertised, submit to the Division of

Environmental Protection of the Department the engineering design, plans and specifications for the ~~capital~~ improvement.

(b) Bids for the ~~capital~~ improvement are opened, submit to the Division the bidding schedules and item descriptions for measurement and payment.

(c) Construction of the ~~capital~~ improvement is begun, submit to the Division:

(1) Proof of the receipt of all necessary permits.

(2) Documentation that any procedures for purchasing and contracting required by the State are being followed.

(3) The agendas for any conferences held before bidding and construction.

(4) Schedules for procurement and construction.

(5) Proof that the funding required to be contributed by the recipient of the grant has been committed to the ~~capital~~ improvement.

(6) Any other documents that the Division deems necessary to verify compliance with the goals of the program.

2. Shall not allow the commencement of any construction relating to the ~~capital~~ improvement until the Division provides the recipient of the grant with a written notice to

proceed with the {capital} improvement. The Division shall, upon its approval of the items received pursuant to subsection 1, provide the recipient with that notice.

Sec. 30. NAC 349.559 is hereby amended to read as follows:

349.559 The recipient of a grant under the program shall:

1. During the construction of the {capital} improvement, provide the Division *of Environmental Protection of the Department* with such documents as the Division deems necessary to determine compliance with the funding agreement.
2. Submit to the Division monthly reports concerning the progress of the construction of the {capital} improvement. Each report must include:
 - (a) A brief description of any work performed on the {capital} improvement after the date of the report submitted by the recipient pursuant to this subsection for the immediately preceding month;
 - (b) A discussion of any problems encountered that may cause a deviation from the schedule of construction for the {capital} improvement or an adjustment to the budget for the {capital} improvement; and
 - (c) Copies of any work directives and change orders issued to the contractor during the period specified in paragraph (a), regardless of whether the contractor approved the directives or orders.
3. Submit to the Division quarterly financial reports concerning the construction of the {capital} improvement. Each report must:
 - (a) Include a current budget for the completion of the {capital} improvement that accurately reflects:

(1) Any costs incurred up to the date of the report;

(2) The anticipated *monthly* costs to complete the ~~{capital}~~ improvement; and

(3) The status of available funding; and

(b) Be accompanied by copies of any change orders affecting the scope or cost of any components of the ~~{capital}~~ improvement that are eligible for payment pursuant to the grant.

4. Provide the Division with current schedules for the construction of the ~~{capital}~~ improvement and such other current information as the Division deems necessary to ensure that:

(a) The components of the ~~{capital}~~ improvement that are eligible for payment pursuant to the grant will be completed; and

(b) The health needs of the community will be met.

Sec. 31. NAC 349.564 is hereby amended to read as follows:

349.564 1. ~~{Before submitting any requests for the disbursement of money pursuant to a grant under the program, the recipient of the grant shall remit any remaining balance of the local share of the administrative fee imposed in accordance with NAC 349.545.~~

—2.— The recipient of ~~{the}~~ a grant *under the program* shall:

(a) Submit periodic requests for the disbursement of money pursuant to the grant on forms provided by the Division ~~{-}~~ *of Environmental Protection of the Department.*

(b) Provide the Division with:

(1) Copies of all contracts related to the ~~{capital}~~ improvement, including contracts for construction, procurement and the provision of professional services. Any invoice submitted by the recipient of the grant for the payment of reimbursable costs must include references to the

authorizing contracts and, if such a contract is divided into separate tasks, references to those tasks.

(2) Proof that any prior disbursements of money pursuant to the grant have been distributed in an appropriate manner ~~{-}~~ *and that any disbursements made pursuant to a present request for the disbursement of money pursuant to the grant will be distributed in an appropriate manner.* The proof must consist of ~~{copies}~~ :

(I) *Copies* of the front ~~{and back}~~ of cancelled checks issued by the recipient of the grant ~~{-~~

~~—3-}~~ ; or

(II) *A signed letter from a vendor stating that the vendor has been paid in full for an invoice that is to be reimbursed by a disbursement made pursuant to the present request for the disbursement.*

2. The disbursement of any money pursuant to a grant under the program must comply with the funding agreement. Each payment must be approved based on the actual costs to date.

Sec. 32. NAC 349.569 is hereby amended to read as follows:

349.569 1. The Division *of Environmental Protection of the Department* may give a recipient of a grant pursuant to the program credit toward the amount of money the recipient is required to provide for the capital improvement pursuant to subsection 3 of NRS 349.983 if the recipient contributes to the capital improvement:

- (a) All of the money the recipient has available for that purpose; and
- (b) Material, labor, equipment or any other contribution approved by the Division other than money.

→ The credit must not exceed the unpaid balance of the amount the recipient is required to provide pursuant to that subsection.

2. To obtain credit pursuant to subsection 1:

(a) A recipient of a grant pursuant to the program must submit to the Division:

(1) Documentation for each contribution made to the capital improvement by the recipient for material, labor, equipment or other contribution approved by the Division;

(2) A postconstruction audit of each contribution made to the capital improvement by the recipient; and

(3) Any other information the Division deems appropriate.

(b) All forms, rates and documentation submitted by the recipient of the grant must be approved by the Division.

3. If the Division approves the credit, the amount of the credit must be determined by the Division based on:

(a) The prevailing wage for similar classifications of work;

(b) The rates paid by the Department of Transportation for the rental of equipment; or

(c) The actual costs sustained by the recipient of the grant.

Sec. 33. NAC 349.574 is hereby amended to read as follows:

349.574 1. After the recipient of a grant pursuant to the program has completed the ~~capital~~ improvement, the recipient shall submit to the Division *of Environmental Protection of the Department* for its approval:

(a) A final engineering report that includes a certificate of completion executed by an engineer indicating that:

(1) The {capital} improvement has been completed in accordance with the provisions of the funding agreement;

(2) The {capital} improvement as constructed has been tested and satisfies the objectives for which it was designed and performs the functions for which it was intended; and

(3) Based on the results of the test specified in subparagraph (2), the quality of materials and workmanship are consistent with the plans and specifications approved for the {capital} improvement;

(b) Drawings of the {capital} improvement as constructed that depict any material changes from the initial plans for the {capital} improvement;

(c) The dates the {capital} improvement was tested, accepted and placed into service;

(d) A statement of the final costs for the {capital} improvement; and

(e) If required by the {Bureau,} **Division**, proof that the {capital} improvement performs the tasks for which it was designed.

2. The recipient of the grant may submit its final request for disbursement of the grant only after the Division has approved the final engineering report submitted pursuant to subsection 1.

3. If the final engineering report, certificate of completion and statement of final costs submitted pursuant to subsection 1 are approved by the Division:

(a) The Division shall release the recipient of the grant from any liability arising pursuant to the funding agreement; and

(b) The recipient of the grant shall discharge the Division and the State of Nevada from any claims or demands arising pursuant to the funding agreement.

4. Upon completion of the requirements of this section and payment of the final request submitted pursuant to subsection 2, any undisbursed amount of the sum authorized for the grant will be made available for other grants pursuant to the program.

Sec. 34. NAC 349.460 and 349.545 are hereby repealed.

TEXT OF REPEALED SECTIONS

349.460 "Division" defined. "Division" means the Division of Water Planning of the Department.

349.545 Administrative fee: Payment; disposition. (NRS 349.982)

1. A recipient of a grant must pay an administrative fee to the Division by the date designated by the Division. The administrative fee must be established by the Administrator of the Division based on the relative size, complexity and cost of the capital improvement, in an amount that does not exceed 3 percent of the money granted to the recipient.

2. The deposit required pursuant to subsection 3 of NAC 349.495 must be applied toward the administrative fee. All or any part of the administrative fee may be paid out of the money granted to the recipient.

3. The administrative fee must be used to reimburse any expense incurred by the Division and the Board pursuant to NAC 349.430 to 349.574, inclusive, and any other interagency agreement made in connection with the program. Any portion of the administrative fee which:

(a) Exceeds the amount of the deposit paid by the recipient pursuant to subsection 3 of NAC 349.495; and

(b) Is not required to reimburse the Division and Board,
↪ must be refunded to the recipient.

Permanent Regulation - Filing Statement

Nevada Division of Environmental Protection – Board for Financing Water Projects

Amendments to the Regulations Governing Grants for Capital Improvements to Publicly Owned Water Systems

Legislative Review of Adopted Regulations as Required
By Administrative Procedures Act, NRS 233B.066

Board for Financing Water Projects LCB File R104-04

This regulation incorporates provisions relating to grants to purveyors of water and eligible recipients to pay for certain costs associated with certain water systems, water conservation, connecting to municipal water systems, and connecting to community sewage disposal systems and provides other matters properly relating thereto.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

The Nevada Division of Environmental Protection (NDEP) held one workshop on the above referenced regulation. The purpose of the workshop was to inform the public and regulated community about the proposed regulatory changes and solicit comments from interested persons. Time and location of the workshop is noted below.

June 28th, 2006 - 10:00 AM
Nevada Division of Environmental Protection
4th Floor South Conference Room
Richard H. Bryan State Office Building
901 South Stewart Street,
Carson City, Nevada

The Board for Financing Water Projects (Board) held a public meeting to consider this regulation for adoption on August 23rd, 2006, at the Richard H. Bryan State Office Building in Carson City, Nevada.

2. The number persons who attended the Board meeting:

- (a) Attended August 23rd, 2006 meeting: 33
- (b) Testified on these regulation amendments at the meeting: 1
- (c) Submitted to the agency written comments: (none)

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses as indicated in number 1 above.

Comments were also solicited by the Board for Financing Water Project (Board) in the Board notice in the newspapers and by direct mail to interested persons subscribing to the Board electronic and ground-based mailing list.

The public notice for the referenced Board meeting was also sent to county libraries throughout the state and the proposed regulation was made available for public inspection at the State Library in Carson City and at the offices of the Nevada Division of Environmental Protection in Carson City and Las Vegas. The workshop notice, summary of comments received at the workshop, the proposed regulation, the Board public notice/meeting agenda were also made available on the Board Website at: <http://ndep.nv.gov/bffwp/bffwp.htm>.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

No changes were proposed at the Board for Financing Water Projects (Board) board meeting on August 23rd, 2006, either by NDEP staff, the public, or the Board. Consensus on the proposed changes was obtained prior to the board meeting, during the drafting and public workshop process.

5. The estimated economic effect of the adopted regulation on the business, which it is to regulate, and on the public.

No anticipated economic effects will result from adoption of this regulation

6. The estimated cost to the agency for enforcement of the adopted regulation.

There will be no additional costs to the Nevada Division of Environmental Protection for implementing this regulation.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The regulation does not overlap or duplicate any regulations of other state, federal, or local agencies.

8. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulation is no more stringent than what is established by federal law.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide new or increased fees.